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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

WALTER A. TORMASI,
Plaintiff,
v.
WESTERN DIGITAL CORPORATION,
Defendant.

) Case Number: 4:19-CV-00772-HSG
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DEFENDANT WESTERN DIGITAL
CORPORATION'S ADMINISTRATIVE
MOTION TO CHANGE TIME
PURSUANT TO CIVIL L.R. 6-3
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I. NOTICE OF MOTION

Pursuant to Civil L.R. 6-3, Defendant Western Digital Corporation (“WDC”) hereby moves to extend the dates set forth in the Order Setting Initial Case Management Conference and ADR Deadlines (Dkt. No. 2) (“Case Management Order”) as discussed below. As set forth in the Declaration of Erica D. Wilson in support of WDC’s motion (“Wilson Decl.”) filed concurrently herewith, Plaintiff Walter A. Tormasi has agreed to the proposed extension. Wilson Decl. ¶5.

1 The parties did not prepare a stipulated request for an order changing time pursuant to Civil
2 Local Rule 6-2, because Mr. Tormasi is a *pro se* Plaintiff who is incarcerated in the New Jersey
3 State Prison in Trenton, New Jersey. Mr. Tormasi has stated that he does not have Internet access
4 thus written communications between the parties must occur via U.S. mail. In view of this, it is
5 unclear whether the parties could prepare and exchange a stipulated request within the time
6 frame set forth in Civil Local Rule 6-2. *Id.* ¶¶4-5.

7 **II. REQUESTED EXTENSION AND REASONS THEREFORE**

8 Mr. Tormasi filed his Complaint for patent infringement on February 12, 2019. Dkt. No.
9 1. On that same day, the Court issued its Case Management Order (Dkt. No. 2), setting the last
10 day for the parties to hold a Rule 26(f) conference and file the ADR Certification for April 23,
11 2019, and the last day for the parties to file a Rule 26(f) report for May 7, 2019. The Initial Case
12 Management Conference is currently scheduled for May 14, 2019. Dkt. No. 2.

13 Plaintiff Tormasi is currently representing himself *pro se* but is incarcerated at the New
14 Jersey State Prison in Trenton, New Jersey. Wilson Decl. ¶4. This poses a number of logistical
15 difficulties. Mr. Tormasi has stated that he does not have Internet access. Written
16 communications between the parties, therefore, must occur via U.S. mail. And, WDC must send
17 requests to the prison to request to speak to Mr. Tormasi via phone. *Id.* Mr. Tormasi has stated
18 that he is attempting to secure legal representation in this case. *Id.* ¶5.

19 WDC waived service of summons and its response to Mr. Tormasi's Complaint is due
20 April 25, 2019. Dkt. No. 14; Wilson Decl. ¶3. WDC is currently investigating Mr. Tormasi's
21 capacity as an incarcerated felon to sue under New Jersey law. *See Fed. R. Civ. P. 17(b); Wilson*
22 *Decl. ¶6.* In addition, WDC is investigating the validity of an assignment of the patent-in-suit
23 from Advanced Data Solutions Corp. ("ADS") to Mr. Tormasi (Dkt. No. 1, Ex. A), and thus Mr.
24 Tormasi's standing to sue. *Id.* Notably, ADS appears to have been in a void status on January 30,
25 2019, the date on which the assignment was purportedly made, and therefore the assignment may
26 be ineffective. If Mr. Tormasi does not own the patent-in-suit, he does not have standing to sue
27 for its infringement. *Id.* WDC is also assessing whether the substantive allegations of the

1 Complaint comport with the pleading standards set forth in the U.S. Supreme Court's decisions
2 in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662
3 (2009) and their progeny. In view of the foregoing, WDC currently anticipates filing at least a
4 partial Motion to Dismiss the Complaint. *Id.*

5 Accordingly, WDC respectfully requests that the Court extend the deadline for the parties
6 to complete the Rule 26(f) conference and file their ADR certification to **30** days after WDC
7 responds to the Complaint or, if WDC files a Motion to Dismiss, **30** days after the Court rules on
8 the motion. WDC likewise requests that the deadline for the parties to submit their Rule 26(f)
9 report be extended to 14 days after the new proposed deadline for completing the Rule 26(f)
10 conference, and the Initial Case Management Conference be scheduled at the Court's
11 convenience after the submission of the Rule 26(f) report.

12 In a March 25, 2019 telephone conference, Mr. Tormasi consented to WDC's proposed
13 extension. Wilson Decl. ¶5.

14 The proposed extension will permit Mr. Tormasi additional time to attempt to secure
15 legal representation, thus potentially avoiding the duplication of effort that would result from
16 preparing a case management schedule and discovery plan now while Mr. Tormasi is
17 representing himself from a New Jersey prison and then preparing new plans after Mr. Tormasi
18 secures legal representation. In addition, certain discovery disputes will not need to be presented
19 to the Court if Mr. Tormasi secures legal counsel. In just one example, disputes over WDC's
20 production of its confidential materials to an incarcerated Plaintiff can be largely avoided if Mr.
21 Tormasi obtains outside counsel. *Id.* ¶7.

22 Moreover, postponing the Rule 26(f) conference until after WDC responds to the
23 Complaint or the Court rules on WDC's Motion to Dismiss will allow the parties to focus their
24 Rule 26(f) conference and subsequent submissions to the Court on the issues that remain in the
25 case or potentially obviate the need for a conference entirely if Mr. Tormasi is found to lack the
26 capacity or standing to sue. *Id.* ¶8.

27 There have been no previous time modifications in this case. *Id.* ¶9.
28

1 WDC expects that the requested change will delay the case about 30 days if WDC does
2 not file a Motion to Dismiss and 2-3 months if it does. *Id.* ¶10.

3 WDC thus requests the following changes to the schedule:

Event	Current Date	Proposed New Date
Last day for Rule 26(f) conference and ADR Certification	April 23, 2019	30 days after WDC responds to the Complaint, or if WDC files a Motion to Dismiss, 30 days after the Court rules on WDC's motion
Last day to file Rule 26(f) report	May 7, 2019	Two weeks after the last day for the Rule 26(f) conference and ADR Certification
Initial Case Management Conference	May 14, 2019	At the Court's convenience after the parties file the Rule 26(f) report

15 WDC would like to make the Court aware that due to Mr. Tormasi's incarceration and
16 lack of Internet access, it cannot deliver a copy of this motion to Mr. Tormasi on the day it is
17 filed, but rather will mail it to him via first class mail. As discussed, Mr. Tormasi has given his
18 consent to the proposed changes to the schedule. Wilson Decl. ¶5.
19

20 **III. CONCLUSION**

21 For the foregoing reasons Defendant WDC respectfully requests that the Court grant its
22 motion to change time.
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1 Dated: March 28, 2019

Respectfully submitted,

3 /s/ Erica D. Wilson

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20 *Western Digital Corporation*

CERTIFICATE OF SERVICE

I am a partner of WALTERS WILSON LLP, and my business address is 702 Marshall Street, Suite 611, Redwood City, CA 94063.

I hereby certify that I caused to be served a copy of the following document on each of the persons listed below by the means specified:

**DEFENDANT WESTERN DIGITAL CORPORATION'S ADMINISTRATIVE
MOTION TO CHANGE TIME PURSUANT TO CIVIL L.R. 6-3**

- A true and correct copy of said document was deposited in a United States postal service mailbox for delivery via first class mail, postage prepaid, on March 28, 2019.

Walter A. Tormasi
#136062/268030C
NJSP
P.O. Box 861
Trenton, NJ 08625

Dated: March 28, 2019.

/s/ Erica D. Wilson
Erica D. Wilson